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UNITED SCHUTZHUND CLUBS OF AMERICA and

JIM ALLOWAY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ZOLTAN NAGY,

Plaintiffs,

vs.

UNITED SCHUTZHUND CLUBS OF  
AMERICA; JIM ALLOWAY, and  
DOES 1 to 10,

Defendants.

CASE NO. 3:19-cv-08459-MMZ

District Judge: Honorable Maxine M.  
Chesney

Courtroom: 7, 19<sup>th</sup> Floor

UNITED SCHUTZHUND CLUBS OF  
AMERICA and JIM ALLOWAY  
ANSWER TO COMPLAINT

Action Filed: December 30, 2019

**TO THE COURT, TO PLAINTIFF, AND TO HER ATTORNEYS OF  
RECORD:**

Defendant United Schutzhund Clubs of America ("Defendant") hereby answers and responds to the Complaint filed by Plaintiff ZOLTAN NAGY in the United States District Court for the Northern District of California, San Francisco Division.

**PARTIES AND JURISDICTION**

1  
2 1. With respect to the allegations in Paragraph 1 of the Complaint,  
3 Defendant is without sufficient knowledge or information to form a belief about the  
4 truth of these allegations and on that basis denies the allegations.

5 2. With respect to the allegations in Paragraph 2 of the Complaint,  
6 Defendant is without sufficient knowledge or information to form a belief about the  
7 truth of these allegations and on that basis denies the allegations.

8 3. With respect to the allegations in Paragraph 3 of the Complaint,  
9 Defendant admits only that Defendant's principal place of business is located in  
10 Arnold, Missouri and that it is an organization that hosts, sponsors, and operates  
11 German Sheppard working dog shows, competitions, and trials. Defendant denies any  
12 allegation not expressly admitted.

13 4. Defendant admits the allegations in Paragraph 4 of the Complaint.

14 5. Defendant denies the allegations in Paragraph 5 of the Complaint.

15 6. The allegations in Paragraph 6 of the Complaint state a legal conclusion  
16 which requires neither admission nor denial. To the extent a response is deemed  
17 necessary, Defendant denies the allegations contained therein.

18 7. The allegations in Paragraph 7 of the Complaint state a legal conclusion  
19 which requires neither admission nor denial. To the extent a response is deemed  
20 necessary, Defendant denies the allegations contained therein.

21 8. The allegations in Paragraph 8 of the Complaint state a legal conclusion  
22 which requires neither admission nor denial. To the extent a response is deemed  
23 necessary, Defendant denies the allegations contained therein.

24 **FACTUAL BACKGROUND**

25 9. With respect to the allegations in Paragraph 9 of the Complaint,  
26 Defendant is without sufficient knowledge or information to form a belief about the  
27 truth of these allegations and on that basis denies the allegations.

28 10. Defendant denies the allegations in Paragraph 10 of the Complaint.

1           11. Defendant denies the allegations in Paragraph 11 of the Complaint.

2           12. Defendant denies the allegations in Paragraph 12 of the Complaint.

3           13. Defendant denies the allegations in Paragraph 13 of the Complaint.

4           14. With respect to the allegations in Paragraph 14, Defendant admits that  
5 under the discipline program, the allegations against the judge are first reviewed and  
6 considered by the Judges Committee, which is managed by the Director of Judges,  
7 and, if the allegation is substantiated, it is then referred to the USCA Executive  
8 Board for review, and potential disciplinary action. Defendant admits that USCA  
9 maintains a written progressive disciplinary program for its judges.

10          15. Defendant denies the allegations in Paragraph 15 of the Complaint.

11          16. Defendant denies the allegations in Paragraph 16 of the Complaint.

12          17. Defendant denies the allegations in Paragraph 17 of the Complaint.

13          18. Defendant denies the allegations in Paragraph 18 of the Complaint.

14          19. Defendant denies the allegations in Paragraph 19 of the Complaint.

15          20. Defendant denies the allegations in Paragraph 20 of the Complaint.

16          21. Defendant denies the allegations in Paragraph 21 of the Complaint.

17          22. Defendant denies the allegations in Paragraph 22 of the Complaint.

18          23. Defendant denies the allegations in Paragraph 23 of the Complaint.

19          24. With respect to the allegations in Paragraph 24 of the Complaint,  
20 Defendant admits only that Jim Alloway criticized the manner in which Plaintiff  
21 was doing his job with one of the helpers. Defendant denies any allegation not  
22 expressly admitted.

23          25. Defendant denies the allegations in Paragraph 25 of the Complaint.

24          26. Defendant denies the allegations in Paragraph 26 of the Complaint.

25          27. Defendant denies the allegations in Paragraph 27 of the Complaint.

26          28. Defendant denies the allegations in Paragraph 28 of the Complaint.

27          29. Defendant denies the allegations in Paragraph 29 of the Complaint.

28          30. With respect to the allegations in Paragraph 30 of the Complaint,

1 Defendant admits only that Jim Alloway, along with two additional members, filed a  
2 report with the Judges' Committee seeking relief to address Plaintiff's misconduct,  
3 which included a brief statement by Jim Alloway. Defendant denies any allegation  
4 not expressly admitted.

5 31. With respect to the allegations in Paragraph 31 of the Complaint,  
6 Defendant admits only that the report was not notarized, but was notarized and re-  
7 filed after this was brought to its attention. Defendant denies any allegation not  
8 expressly admitted.

9 32. With respect to the allegations in Paragraph 32 of the Complaint,  
10 Defendant admits that the Judges Committee recommended to the Executive Board  
11 that Plaintiff be suspended as a Performance Judge for one year and that the  
12 Executive board issued the one-year suspension. Defendant denies any allegation  
13 not expressly admitted.

14 33. With respect to the allegations in Paragraph 33, Defendant admits that  
15 Plaintiff disagreed with the findings. Defendant denies any allegation not expressly  
16 admitted.

17 34. With respect to the allegations in Paragraph 34, Defendant admits that  
18 Plaintiff retained legal counsel. Defendant denies any allegation not expressly  
19 admitted.

20 35. With respect to the allegations in Paragraph 35, Defendant admits that  
21 Jim Alloway submitted his same report, but notarized. Defendant denies any  
22 allegation not expressly admitted.

23 36. With respect to the allegations in Paragraph 36 of the Complaint,  
24 Defendant admits that the report was sent to the Judges Committee, who  
25 recommended disciplinary action to the Executive Board. Defendant admits that Jim  
26 Alloway is a member of the Executive Board, but denies he had any involvement in  
27 any voting regarding Plaintiff. Defendant denies any allegation not expressly  
28 admitted.

1           37. With respect to the allegations in Paragraph 37 of the Complaint,  
2 Defendant admits that the Executive Board issued a one-year suspension against  
3 Plaintiff. Defendant denies any allegation not expressly admitted.

4           38. Defendant denies the allegations in Paragraph 38 of the Complaint.

5           39. Defendant denies the allegations in Paragraph 39 of the Complaint.

6           40. With respect to the allegations in Paragraph 40 of the Complaint,  
7 Defendant admits that USCA upheld one-year suspension for Plaintiff. Defendant  
8 denies any allegation not expressly admitted.

9           41. Defendant denies the allegations in Paragraph 41 of the Complaint.

10                                   **FIRST CAUSE OF ACTION –**  
11                                   **VIOLATION OF TITLE VII CIVIL RIGHTS ACT-**  
12                                   **DISCRIMINATION**

13           42. With respect to the allegations in Paragraph 42, Defendant incorporates  
14 by reference its answers to Paragraphs 1-41 as if fully set forth herein.

15           43. The allegations in Paragraph 43 of the Complaint state a legal  
16 conclusion which requires neither admission nor denial. To the extent a response is  
17 deemed necessary, Defendant denies any allegations of wrongdoing.

18           44. The allegations in Paragraph 44 of the Complaint state a legal  
19 conclusion which requires neither admission nor denial. To the extent a response is  
20 deemed necessary, Defendant denies any allegations of wrongdoing.

21           45. The allegations in Paragraph 45 of the Complaint state a legal  
22 conclusion which requires neither admission nor denial. To the extent a response is  
23 deemed necessary, Defendant denies any allegations of wrongdoing.

24           46. Defendant denies the allegations in Paragraph 46 of the Complaint.

25           47. Defendant denies the allegations in Paragraph 47 of the Complaint.

26           48. The allegations in Paragraph 48 of the Complaint state a legal  
27 conclusion which requires neither admission nor denial. To the extent a response is  
28 deemed necessary, Defendant denies any allegations of wrongdoing.

**SECOND CAUSE OF ACTION –**

**VIOLATION OF TITLE VII CIVIL RIGHTS ACT- RETALIATION**

49. With respect to the allegations in Paragraph 49, Defendant incorporates by reference its answers to Paragraphs 1-48 as if fully set forth herein.

50. The allegations in Paragraph 50 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

51. The allegations in Paragraph 51 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

52. The allegations in Paragraph 52 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

53. Defendant denies the allegations in Paragraph 53 of the Complaint.

54. Defendant denies the allegations in Paragraph 54 of the Complaint.

55. The allegations in Paragraph 55 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

**THIRD CAUSE OF ACTION –**

**VIOLATION OF TITLE VII CIVIL RIGHTS ACT- RETALIATION**

56. With respect to the allegations in Paragraph 56, Defendant incorporates by reference its answers to Paragraphs 1-55 as if fully set forth herein.

57. The allegations in Paragraph 57 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

58. The allegations in Paragraph 58 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

1        59. The allegations in Paragraph 49 of the Complaint state a legal  
2 conclusion which requires neither admission nor denial. To the extent a response is  
3 deemed necessary, Defendant denies any allegations of wrongdoing.

4        60. Defendant denies the allegations in Paragraph 60 of the Complaint.

5        61. Defendant denies the allegations in Paragraph 61 of the Complaint.

6        62. The allegations in Paragraph 62 of the Complaint state a legal  
7 conclusion which requires neither admission nor denial. To the extent a response is  
8 deemed necessary, Defendant denies any allegations of wrongdoing.

9                                **FOURTH CAUSE OF ACTION –**  
10                              **VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT &**  
11                              **HOUSING ACT- DISCRIMINATION**

12        63. With respect to the allegations in Paragraph 63, Defendant incorporates  
13 by reference its answers to Paragraphs 1-62 as if fully set forth herein.

14        64. The allegations in Paragraph 64 of the Complaint state a legal  
15 conclusion which requires neither admission nor denial. To the extent a response is  
16 deemed necessary, Defendant denies any allegations of wrongdoing.

17        65. The allegations in Paragraph 65 of the Complaint state a legal  
18 conclusion which requires neither admission nor denial. To the extent a response is  
19 deemed necessary, Defendant denies any allegations of wrongdoing.

20        66. The allegations in Paragraph 66 of the Complaint state a legal  
21 conclusion which requires neither admission nor denial. To the extent a response is  
22 deemed necessary, Defendant denies any allegations of wrongdoing.

23        67. Defendant denies the allegations in Paragraph 67 of the Complaint.

24        68. Defendant denies the allegations in Paragraph 68 of the Complaint.

25        69. The allegations in Paragraph 69 of the Complaint state a legal  
26 conclusion which requires neither admission nor denial. To the extent a response is  
27 deemed necessary, Defendant denies any allegations of wrongdoing.



**FIFTH CAUSE OF ACTION –**  
**VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT &**  
**HOUSING ACT- RETALIATION**

70. With respect to the allegations in Paragraph 70, Defendant incorporates by reference its answers to Paragraphs 1-69 as if fully set forth herein.

71. The allegations in Paragraph 71 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

72. The allegations in Paragraph 72 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

73. The allegations in Paragraph 73 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

74. Defendant denies the allegations in Paragraph 74 of the Complaint.

75. Defendant denies the allegations in Paragraph 75 of the Complaint.

76. The allegations in Paragraph 76 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

**SIXTH CAUSE OF ACTION –**  
**VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT &**  
**HOUSING ACT- HARASSMENT**

77. With respect to the allegations in Paragraph 77, Defendant incorporates by reference its answers to Paragraphs 1-76 as if fully set forth herein.

78. The allegations in Paragraph 78 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

79. The allegations in Paragraph 79 of the Complaint state a legal



1 conclusion which requires neither admission nor denial. To the extent a response is  
2 deemed necessary, Defendant denies any allegations of wrongdoing.

3 80. The allegations in Paragraph 80 of the Complaint state a legal  
4 conclusion which requires neither admission nor denial. To the extent a response is  
5 deemed necessary, Defendant denies any allegations of wrongdoing.

6 81. Defendant denies the allegations in Paragraph 81 of the Complaint.

7 82. Defendant denies the allegations in Paragraph 82 of the Complaint.

8 83. The allegations in Paragraph 83 of the Complaint state a legal  
9 conclusion which requires neither admission nor denial. To the extent a response is  
10 deemed necessary, Defendant denies any allegations of wrongdoing.

11 **SEVENTH CAUSE OF ACTION –**

12 **VIOLATION OF THE CALIFORNIA LABOR CODE- FAILURE TO**  
13 **PROVIDE ITEMIZED WAGE STATEMENTS**

14 84. With respect to the allegations in Paragraph 84, Defendant incorporates  
15 by reference its answers to Paragraphs 1-83 as if fully set forth herein.

16 85. The allegations in Paragraph 85 of the Complaint state a legal  
17 conclusion which requires neither admission nor denial. To the extent a response is  
18 deemed necessary, Defendant denies any allegations of wrongdoing.

19 86. With respect to the allegations in Paragraph 86, Defendant admits only  
20 that Plaintiff purports to seek damages, penalties, and other relief, as proven at trial  
21 but denies that Defendant has committed any wrongful conduct alleged in the  
22 Complaint and further denies that Plaintiff is entitled to any damages, penalties, or  
23 other relief.

24 **EIGHTH CAUSE OF ACTION –**

25 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC**  
26 **ADVANTAGE**

27 87. With respect to the allegations in Paragraph 87, Defendant incorporates  
28 by reference its answers to Paragraphs 1-86 as if fully set forth herein.

1           88. Defendant denies the allegations in Paragraph 88 of the Complaint.

2           89. Defendant denies the allegations in Paragraph 89 of the Complaint.

3           90. Defendant denies the allegations in Paragraph 90 of the Complaint.

4           91. The allegations in Paragraph 91 of the Complaint state a legal  
5 conclusion which requires neither admission nor denial. To the extent a response is  
6 deemed necessary, Defendant denies any allegations of wrongdoing.

7                                   **NINTH CAUSE OF ACTION –**  
8           **VIOLATIONS OF THE FLSA, 29 U.S.C. SECTION 207 ET SEQ- FAILURE**  
9           **TO PAY ALL WAGES DUE AND OVERTIME**

10           92. With respect to the allegations in Paragraph 92, Defendant incorporates  
11 by reference its answers to Paragraphs 1-91 as if fully set forth herein.

12           93. The allegations in Paragraph 93 of the Complaint state a legal  
13 conclusion which requires neither admission nor denial. To the extent a response is  
14 deemed necessary, Defendant denies any allegations of wrongdoing.

15           94. The allegations in Paragraph 94 of the Complaint state a legal  
16 conclusion which requires neither admission nor denial. To the extent a response is  
17 deemed necessary, Defendant denies any allegations of wrongdoing.

18           95. Defendant denies the allegations in Paragraph 95 of the Complaint.

19           96. With respect to the allegations in Paragraph 96, Defendant is without  
20 sufficient knowledge or information to form a belief about the truth of these  
21 allegations and on that basis denies the allegations.

22                                   **TENTH CAUSE OF ACTION –**  
23           **DECLARATORY RELIEF**

24           97. With respect to the allegations in Paragraph 97, Defendant incorporates  
25 by reference its answers to Paragraphs 1-96 as if fully set forth herein.

26           98. Defendant denies the allegations in Paragraph 98 of the Complaint.

27           99. Defendant denies the allegations in Paragraph 99 of the Complaint.

**ELEVENTH CAUSE OF ACTION –**  
**VIOLATIONS OF THE CALIFORNIA UNRUH CIVIL RIGHTS ACT**

100. With respect to the allegations in Paragraph 100, Defendant incorporates by reference its answers to Paragraphs 1-99 as if fully set forth herein.

101. The allegations in Paragraph 101 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

102. The allegations in Paragraph 102 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

103. Defendant denies the allegations in Paragraph 103 of the Complaint.

104. Defendant denies the allegations in Paragraph 104 of the Complaint.

105. The allegations in Paragraph 105 of the Complaint state a legal conclusion which requires neither admission nor denial. To the extent a response is deemed necessary, Defendant denies any allegations of wrongdoing.

**TWELFTH CAUSE OF ACTION –**  
**VIOLATIONS OF THE CALIFORNIA LABOR CODE-FAILURE TO PAY**  
**ALL WAGES DUE AND OVERTIME**

106. With respect to the allegations in Paragraph 106, Defendant incorporates by reference its answers to Paragraphs 1-105 as if fully set forth herein.

107. Defendant denies the allegations in Paragraph 107 of the Complaint.

108. With respect to the allegations in Paragraph 108, Defendant denies that Plaintiff is entitled to any requested relief or damages.

**THIRTEENTH CAUSE OF ACTION –**  
**WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

109. With respect to the allegations in Paragraph 109, Defendant incorporates by reference its answers to Paragraphs 1-108 as if fully set forth herein.

110. The allegations in Paragraph 110 of the Complaint state a legal

1 conclusion which requires neither admission nor denial.

2 111. Defendant denies the allegations in Paragraph 111 of the Complaint.

3 112. Defendant denies the allegations in Paragraph 112 of the Complaint.

4 113. Defendant denies the allegations in Paragraph 113 of the Complaint.

5 114. The allegations in Paragraph 114 of the Complaint state a legal  
6 conclusion which requires neither admission nor denial. To the extent a response is  
7 deemed necessary, Defendant denies any allegations of wrongdoing.

8 **FOURTEENTH CAUSE OF ACTION –**  
9 **DEFAMATION**

10 115. With respect to the allegations in Paragraph 115, Defendant  
11 incorporates by reference its answers to Paragraphs 1-114 as if fully set forth herein.

12 116. Defendant denies the allegations in Paragraph 116 of the Complaint.

13 117. Defendant denies the allegations in Paragraph 117 of the Complaint.

14 118. Defendant denies the allegations in Paragraph 118 of the Complaint.

15 119. Defendant denies the allegations in Paragraph 119 of the Complaint.

16 120. Defendant denies the allegations in Paragraph 120 of the Complaint.

17 121. The allegations in Paragraph 121 of the Complaint state a legal  
18 conclusion which requires neither admission nor denial. To the extent a response is  
19 deemed necessary, Defendant denies any allegations of wrongdoing.

20 **PRAYER FOR RELIEF**

21 122. The allegations in this section contain a prayer for relief and no  
22 response is required. However, to the extent a response is deemed necessary,  
23 Defendant denies any implication that it acted wrongfully or improperly and  
24 expressly denies that Plaintiff is entitled to any relief he seeks.

25 **AFFIRMATIVE DEFENSES**

26 Without prejudice to the denials set forth in its Answer and without waiving  
27 any allegations in the Complaint not otherwise admitted, Defendant United  
28 Schutzhund Clubs of America asserts the following affirmative defenses. In

1 addition, Defendant specifically and expressly reserves the right to amend these  
2 defenses, or to add additional defenses, based upon legal theories, facts and  
3 circumstances that may or will be discovered and/or further legal analysis of  
4 Plaintiff's position in this litigation.

5 **FIRST AFFIRMATIVE DEFENSE**

6 1. As a separate and distinct affirmative defense, Defendant alleges that the  
7 Complaint is barred by the applicable statute of limitations, including but not limited  
8 to, Code of Civil Procedure § 340; Code of Civil Procedure §§ 335.1, 337, 338, 339,  
9 340(a), and 343; Government Code §§ 12940, 12654, 12960(d), 12965(b); Business  
10 and Professions Code Section 17208; and any shorter statute of limitations periods  
11 provided by any agreement of the parties.

12 **SECOND AFFIRMATIVE DEFENSE**

13 2. As a separate and distinct affirmative defense, Defendant alleges that  
14 neither the Complaint nor any purported cause of action alleged therein states a  
15 claim upon which relief can be granted.

16 **THIRD AFFIRMATIVE DEFENSE**

17 3. As a separate and distinct affirmative defense, Defendant claims that the  
18 allegations of the Complaint, and each purported cause of action contained therein,  
19 are not pled with sufficient particularity and are uncertain, vague, ambiguous, and  
20 unintelligible.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 4. As a separate and distinct affirmative defense, Defendant claims that the  
23 allegations and claims asserted in the Complaint are frivolous, groundless, and  
24 without merit. Plaintiff has brought this action in bad faith.

25 **FIFTH AFFIRMATIVE DEFENSE**

26 5. As a separate and distinct affirmative defense, Defendant alleges that  
27 Plaintiff did not suffer an actual injury and therefore cannot recover damages or  
28 statutory penalties under Labor Code section 226.

**SIXTH AFFIRMATIVE DEFENSE**

6. As a separate and distinct affirmative defense, Defendant alleges that the Complaint fails to allege facts sufficient to establish a claim for penalties.

**SEVENTH AFFIRMATIVE DEFENSE**

7. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's claims for civil penalties pursuant to Labor Code section 226 is barred, because Defendant did not knowingly and intentionally fail to provide accurate itemized wage statements.

**EIGHTH AFFIRMATIVE DEFENSE**

8. As a separate and distinct affirmative defense, Defendant alleges that an award of penalties under the circumstances of this case would constitute an excessive fine and otherwise would be in violation of Defendant's due process and other rights under the United States and California Constitutions.

**NINTH AFFIRMATIVE DEFENSE**

9. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff is precluded from recovering the damages alleged in the Complaint, because those damages are too vague, uncertain, and speculative to permit recovery.

**TENTH AFFIRMATIVE DEFENSE**

10. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff's claims are barred by either a mistake of fact or a mistake of law or both.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. As a separate and distinct affirmative defense, Defendant alleges that the Complaint, and each and every purported cause of action contained therein, is barred in that Plaintiff is guilty of wrongful misconduct and/or omissions in connection with the claims that form the basis of this litigation, including, but not limited to, the facts concerning Plaintiff's relationship with Defendant, and therefore, each and every claim should be barred from all legal or equitable relief requested in the Complaint or otherwise by reason of unclean hands. Defendant may learn facts in

1 written discovery and/or at Plaintiff's deposition that may demonstrate Plaintiff's  
2 own wrongful conduct caused or contributed to the allegations set forth in the  
3 Complaint, which would allow Defendant to assert the equitable remedy of unclean  
4 hands at the time of trial.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 12. As a separate and distinct affirmative defense, Defendant alleges that  
7 Plaintiff may be estopped by his own conduct from asserting any and all claims he  
8 may have or has against Defendant arising from the transactions and occurrences set  
9 forth in the Complaint. Defendant may learn facts in written discovery and/or at  
10 Plaintiff's deposition that may demonstrate Plaintiff's own wrongful conduct caused  
11 or contributed to the allegations set forth in the Complaint, which would allow  
12 Defendant to assert the equitable remedy of estoppel at the time of trial.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 13. As a separate and distinct affirmative defense, Defendant alleges that  
15 Plaintiff may have waived any and all claims that he may have had or has against  
16 Defendant arising from the transactions and occurrences set forth in the Complaint.  
17 Defendant may learn facts in written discovery and/or at Plaintiff's deposition that  
18 may demonstrate Plaintiff engaged in conduct that would constitute a waiver, which  
19 would allow Defendant to assert the equitable remedy of waiver at the time of trial.  
20 Defendant further alleges that Plaintiff may have or has consented to and/or waived  
21 any and all rights he may have had relative to the matters alleged in the Complaint  
22 by failing, refusing, and neglecting to properly perform his obligations thereunder  
23 and by undertaking other conduct, the exact nature of which will be inserted herein  
24 by amendment or proved at the time of trial.

25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 14. As a separate and distinct affirmative defense, Defendant alleges that  
27 Plaintiff, at all relevant times, gave his consent, express or implied, to the alleged  
28 acts, omissions, and conduct of Defendant. Defendant may learn facts in written



1 discovery and/or at Plaintiff's deposition that may demonstrate Plaintiff engaged in  
2 conduct that would establish consent to the conduct alleged in the Complaint, which  
3 would allow Defendant to assert the equitable remedy of consent at the time of trial.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 15. As a separate and distinct affirmative defense, Defendant alleges that  
6 Plaintiff's damages, if any, were caused by Plaintiff's own intentional or negligent  
7 acts, thus barring or limiting Plaintiff's right of recovery.

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 16. As a separate and distinct affirmative defense, Defendant alleges that  
10 Plaintiff's claims as set forth in his Complaint are barred by the equitable doctrine of  
11 laches.

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 17. As a separate and distinct affirmative defense, Defendant alleges that the  
14 Complaint fails to allege facts sufficient to establish a claim for attorneys' fees.

15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

16 18. As a separate and distinct affirmative defense, Defendant alleges that  
17 Plaintiff's claims for penalties under the California Labor Code and/or under other  
18 applicable California law are barred, as Plaintiff has failed to plead sufficient facts  
19 to support a claim for an award of penalties against Defendant and because there  
20 existed and continues to exist a good-faith dispute on whether Defendant owes any  
21 monies to Plaintiff.

22 **NINETEENTH AFFIRMATIVE DEFENSE**

23 19. As a separate and distinct affirmative defense, Defendant alleges that it  
24 may have other separate and/or additional defenses of which it is not presently  
25 aware and hereby reserves the right to assert them by amendment to this Answer as  
26 discovery continues.

27 **TWENTIETH AFFIRMATIVE DEFENSE**

28 20. As a separate and distinct affirmative defense, Plaintiff's claims should be

1 dismissed for improper venue and/or pursuant to the doctrine of *forum non*  
2 *conveniens*.

3 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

4 21. As a separate and distinct affirmative defense, Defendant alleges that  
5 Plaintiff's claims are barred because this court lack subject matter jurisdiction over  
6 the claims Plaintiff asserts in his Complaint.

7 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

8 22. As a separate and distinct affirmative defense, Defendant alleges that  
9 Plaintiff's claims are barred because this court lacks personal jurisdiction over  
10 Defendant.

11 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

12 23. Defendant did not engage in intentional conduct entitling Plaintiff to  
13 recovery of damages pursuant to the Unruh Civil Rights Act.

14 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

15 24. Plaintiff's claim for defamation is barred under the substantial truth  
16 doctrine.

17 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

18 25. Plaintiff's Defamation cause of action is barred because any alleged  
19 publications or statements made by Defendant, if any, constituted  
20 Defendant's opinion.

21 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

22 26. Plaintiff is barred from recovery as the alleged defamatory statements  
23 complained of in Plaintiff's Complaint were fair comments made on matters of  
24 public interest.

25 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

26 27. The publications and conduct that are the subject of  
27 Plaintiff's Complaint are privileged pursuant to the common interest privilege,  
28 California *Civil Code* § 47(c) and any other applicable statutory and/or non-statutory

1 absolute and/or conditional privileges.

2 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

3 28. Plaintiff's purported claim for defamation is barred because any alleged  
4 statements made by Defendant was not made with actual malice or negligence.

5 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

6 29. Plaintiff's purported claim for defamation is barred under the First  
7 Amendment of the United States Constitution.

8 **THIRTIETH AFFIRMATIVE DEFENSE**

9 30. Plaintiff has failed to satisfy the statutory prerequisites to sue and to  
10 exhaust administrative remedies under the Fair Employment and Housing Act  
11 ("FEHA"), California Government Code § 12940 et seq., the Equal Employment  
12 Opportunity Commission ("EEOC"), 42 U.S.C. § 2000e, et seq. (Title VII of the  
13 Civil Rights Act of 1964 ("Title VII"), under the Private Attorney General's Act,  
14 Labor Code

15 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

16 31. Plaintiff is precluded from recovery of reinstatement, back pay, or  
17 damages because Defendant did not harass, discriminate, or retaliate against him.

18 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

19 32. Plaintiff is precluded from any recovery because the  
20 Defendant maintained a discrimination-, retaliation-, and harassment-free  
21 environment and thus could not have failed to prevent any alleged discrimination,  
22 harassment, or retaliation.

23 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

24 33. Plaintiff is barred from recovery insofar as his claims are based upon an  
25 isolated purported incident or incidents.

26 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

27 34. The conduct that Plaintiff alleges Defendants engaged in did not  
28 constitute severe or pervasive harassment.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

35. Defendants allege that Plaintiffs cannot establish that any of Defendants' actions were a pretext for unlawful discrimination, retaliation, and/or violation of public policy.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

36. Defendant is informed and believes and thereon alleges that in regards to the allegations of harassment, discrimination and retaliation, a full, complete and good faith investigation was conducted into any alleged misconduct and request after it was brought to Defendant's attention.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

37. Answering Defendant was not, at any time, Plaintiff's employer and thus it is not liable for the alleged acts or omissions as set forth in Plaintiff's complaint.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

38. Plaintiffs' claim for civil penalties pursuant to California *Labor Code* Section 226 are barred because Defendant did not knowingly and intentionally fail to provide accurate itemized wage statements.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

39. As a separate and distinct affirmative defense, Defendant alleges that Plaintiff has never been, and never will be, entitled to payment of any sort of wages, as he not an employee of Defendant.

**FORTIETH AFFIRMATIVE DEFENSE**

40. Defendant denies Plaintiff was an employee, but in any event alleges that Plaintiff's claims for unpaid overtime wages are barred because Defendant timely paid all compensation owed to him.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

41. Plaintiff's cause of action for intentional interference with prospective economic advantage fails because the economic relationship that is the basis for the claim was not a "third party" economic relationship.

**FORTY-SECOND AFFIRMATIVE DEFENSE**

42. Plaintiff's cause of action for intentional interference with prospective economic advantage fails because the alleged interference was not wrongful, independent of its allegedly interfering character.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

43. Plaintiff's Complaint does not allege facts sufficient to support a claim for declaratory relief against Defendant.

**FORTY-FOURTH AFFIRMATIVE DEFENSE**

44. Plaintiff's Complaint, and each and every claim contained therein, is barred, in whole or part because Defendant complied with all of its legal duties under the Unruh Civil Rights Act.

**FORTY-FIFTH AFFIRMATIVE DEFENSE**

45. Defendant did not engage in intentional conduct entitling Plaintiff to recovery of damages pursuant to the Unruh Civil Rights Act.

**FORTY-SIXTH AFFIRMATIVE DEFENSE**

46. Defendant alleges based upon information and belief that Plaintiff lacks standing to assert a claim under the Unruh Civil Rights Act or predicated on the Unruh Civil Rights Act because Plaintiff has not suffered a threatened or actual distinct and palpable injury, there is no causal connection between the injury and Defendant's challenged conduct, and/or there is no substantial likelihood that the relief sought by Plaintiff will prevent or redress the injury.

**FORTY-SEVENTH AFFIRMATIVE DEFENSE**

47. The public policies cited by Plaintiffs in the Complaint cannot serve as the foundation for a claim of wrongful termination in violation of public policy because they have never been recognized as public policies as defined in governing case law and are, in fact, inconsistent with the public policies which have been so recognized, or are not applicable to Defendants.

**FORTY-EIGHTH AFFIRMATIVE DEFENSE**

48. Plaintiff is precluded from any recovery as Plaintiff was not wrongfully terminated by Defendant, as he was not an employee.

**FORTY-NINTH AFFIRMATIVE DEFENSE**

49. Defendant alleges that it maintained and enforced strict anti-discrimination and anti-retaliation policies during the time in which Plaintiff alleges discrimination and retaliation.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff takes nothing by way of the Complaint or any of his purported claims for relief;
2. That the Complaint be dismissed with prejudice in its entirety;
3. That Plaintiff is denied each and every demand and prayer for relief contained in the Complaint;
4. That judgment be entered in favor of Defendant;
5. That Defendant recovers its costs of suit incurred herein; and
6. That Defendant be awarded such other and further relief as the Court may deem just and proper.

DATED: October 6, 2020

JOHN L. BARBER  
JULIE W. O'DELL  
LAUREN E. WERTHEIMER  
LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Lauren Wertheimer  
LAUREN E. WERTHEIMER  
Attorneys for Defendants UNITED  
SCHUTZHUND CLUBS OF AMERICA and JIM  
ALLOWAY

**FEDERAL COURT PROOF OF SERVICE**

Nagy v. United Schutzhund Clubs of America, et al.  
3:19-cv-08459-CRB

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On October 6, 2020, I served the following document(s): UNITED SCHUTZHUND CLUBS OF AMERICA AND JIM ALLOWAY ANSWER TO COMPLAINT

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

James Mills	Attorneys for Plaintiff
Law Offices of James Mills	
1300 Clay Street, Suite 600	
Oakland, CA 94612	
Tel: 510-521-8748	
Email: <a href="mailto:james@jamesmillslaw.com">james@jamesmillslaw.com</a>	

The documents were served by the following means:

☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on October 6, 2020, at Los Angeles, California.



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Lily Hernandez